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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,067	12/30/2003	Nikolai G. Nikolov	6570P034	9096

8791 7590 01/16/2007	EXAMINER	
BLAKELY SOKOLOFF TAYLOR & ZAFMAN	KENDALL, CHUCK O	
12400 WILSHIRE BOULEVARD		
SEVENTH FLOOR	ART UNIT	PAPER NUMBER
LOS ANGELES, CA 90025-1030	2192	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/16/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

		Application No.	Applicant(s)
		10/750,067	NIKOLOV ET AL.
Office Action Summary		Examiner	Art Unit
		Chuck O. Kendall	2192

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>30 December 2003</u>.

2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1-57</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) <u>1-57</u> is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on <u>30 December 2003</u> is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>11/013/06</u>.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

1.   This action is in response to Application filed 12/30/03.

2.   Claims 1 – 57 have been examined.

Claim Rejections - 35 USC § 102

3.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

4.   Claims are rejected under 35 U.S.C. 102(e) as being anticipated by Avakian et

al. US 2005/0039187 A1.

        Regarding claims 1 and 39, Avakian anticipates a byte code modification method

and machine readable medium, comprising:

        modifying a method's byte code instructions, said method comprising an entry

point and an exit point (FIG. 8B, 830 and 832 and all associated text), said modifying

comprising inserting first and second additional byte code instructions into said

method's byte code instructions, said first additional byte code instruction to cause a

first output function to be executed for said method as a consequence of said entry

point being reached during runtime, said second additional byte code instruction to

cause a second output function to be executed for said method as a consequence of

said exit point being reached during runtime (0061-0063, see in 0061, BIP tool 38,

which writes the modified classes also see BIC tool 26).

Regarding claims 2 and 40, the byte code modification method of claim 1

wherein said first output function records a time of said entry point being reached (0132,

see ARM interface 44 "keeps track of the time elapsed between start and the end of the

transaction").

Regarding claims 3 and 41, the byte code modification method of claim 2

wherein said first output function records input parameters provided to said method

(0062, shows the BIP and BIC tools which shows reading, writing and modifying).

Regarding claims 4 and 42, the byte code modification method of claim 1

wherein said first output function records input parameters provided to said method

(0062, shows the BIP and BIC tools which shows reading, writing and modifying).

Regarding claims 5 and 43, the byte code modification method of claim 1

wherein said second output function records a time of said exit point being reached

(0132, see elapsed time).

Regarding claims 6 and 44, the byte code modification method of claim 5

wherein said second output function records output parameters provided by said

method (0062, see pattern file 31, which contains descriptors for classes and/or method

that are to be included or excluded from implementation).

Regarding claims 7 and 45, the byte code modification method of claim 1

wherein said second output function records output parameters provided by said

method (0062, see pattern file 31, which contains descriptors for classes and/or method

that are to be included or excluded from implementation, also see BIP and BIC tools

which writes/output the files).

Regarding claims 10 and 48, the byte code modification method of claim 1 further

comprising compiling source code prior to said modifying to produce said method's

unmodified byte code instructions (0051).

Regarding claims 11 and 49, the byte code modification method of claim 1

wherein said byte code instructions are capable of being interpreted by a Java virtual

machine (0051).

Regarding claims 12 and 50, the byte code modification method of claim 1

wherein said first additional byte code instruction is to invoke a second method that

refers to a dictionary, said dictionary having an entry for said method that identifies the

location of a plug-in module containing a handler method that performs said first output

function (FIG. 2, 27A).

Regarding claims 13 and 51, the byte code modification method of claim 12

wherein said method's byte code instructions are capable of being interpreted by a Java

virtual machine, and, said first additional byte code instruction is an invoke static

instruction [0146, see static hook].

Regarding claims 14 and 52, the byte code modification method of claim 12

wherein said method's byte code instructions are capable of being interpreted by a Java

virtual machine, and, said first additional byte code instruction is an invoke virtual

instruction [0180, see virtual instructions].

Regarding claims 15 and 53, the byte code modification method of claim 12

wherein said method's byte code instructions are capable of being interpreted by a Java

virtual machine, and, said first additional byte code instruction is an invoke special

instruction [0058. see JVM, note java is an interpreted language hence interpreting by

the JVM is inherent also see 0093 for invoke special).

Regarding claims 16 and 54, the byte code modification method of claim 12

wherein said second additional byte code instruction is to invoke a third method that

refers to said dictionary, said dictionary having an entry for said method that identifies

the location of a plug-in module containing a handler method that performs said second

output function [0093 and 0065, discloses instrumentation tool 38 and plug-in

instruments which perform handler functions).

Regarding claims 17 and 55, the byte code modification method of claim 16

wherein said handler method that performs said first output function and said handler

method that perform said second output function are the same handler method [0093

and 0065, discloses instrumentation tool 38 and plug-in instruments which perform

handler functions).

Regarding claims 18 and 56, the byte code modification method of clam 1

wherein said modifying further comprises inserting a third additional byte code

instruction, said third additional byte code instruction to cause a third output function to

be executed for said method as a consequence of an error arising during execution of

said method [0147, see further exception handling].

Regarding claims 19 and 57, the byte code modification method of claim 1 wherein said modifying further comprises inserting an additional byte code instruction for each of said method's exit points to cause a second output function to be executed for said method as a consequence of any of said method's exit points being reached [0108].

Regarding claim 20, Avakian anticipates a byte code modification and distributed statistical recording method [0047, see application server, monitoring and analyzing performance], comprising:

modifying a method's byte code instructions, said method comprising an entry point and an exit point, said modifying comprising inserting first and second additional byte code instructions into said method's byte code instructions, said first additional byte code instruction to cause a first output function to be executed for said method as a consequence of said entry point being reached during runtime, said second additional byte code instruction to cause a second output function to be executed for said method as a consequence of said exit point being reached during runtime (0061-0063, see in 0061, BIP tool 38, which writes the modified classes also see BIC tool 26);

executing said method during runtime so as to execute said first and second output functions, said executing of said first and second output functions causing information concerning said method to be registered [0196]; and,

translating said information to a format employed within a distributed statistical records ("DSR") system [0047].

Regarding claim 21, which claims similarly to claim 2, see rationale above as previously addressed.

Regarding claim 22, which claims similarly to claim 3, see rationale above as previously addressed.

Regarding claim 23, which claims similarly to claim 4, see rationale above as previously addressed.

Regarding claim 24, which claims similarly to claim 5, see rationale above as previously addressed.

Regarding claim 25, which claims similarly to claim 6, see rationale above as previously addressed.

Regarding claim 26, which claims similarly to claim 7, see rationale above as previously addressed.

Regarding claim 29, which claims similarly to claim 10, see rationale above as previously addressed.

Regarding claim 30, which claims similarly to claim 11, see rationale above as previously addressed.

Regarding claim 31, which claims similarly to claim 12, see rationale above as previously addressed.

Regarding claim 32, which claims similarly to claim 13, see rationale above as previously addressed.

Regarding claim 33, which claims similarly to claim 14, see rationale above as previously addressed.

Regarding claim 34, which claims similarly to claim 15, see rationale above as previously addressed.

Regarding claim 35, which claims similarly to claim 16, see rationale above as previously addressed.

Regarding claim 36, which claims similarly to claim 17, see rationale above as previously addressed.

Regarding claim 37, which claims similarly to claim 18, see rationale above as previously addressed.

Regarding claim 38, which claims similarly to claim 19, see rationale above as previously addressed.

Claim Rejections - 35 USC § 103

5.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6.   Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Avakian et al. US 2005/0039187 A1 in view of Berry et al. US 6,662,359 B1.

Regarding claims 8 and 46, Avakian discloses all the claimed limitations as applied in claim 1 above. Avakian doesn't expressly disclose wherein said first output

function increments a counter maintained for said method. However, Berry does

disclose incrementing a counter which maintains an instrumentation sequence of code

(FIG.5, 514). Therefore it would have been obvious to one of ordinary skill in the art at

the time the invention was made to combine Avakian and Berry because, it would

enable keeping track of the instrumented code.

Regarding claims 9 and 47, the byte code modification method of claim 1

wherein said second output function increments a counter maintained for said method

(Berry, FIG.5, 514).

Regarding claim 27, which claims similarly to claim 8, see rationale above as

previously addressed.

Regarding claim 28, which claims similarly to claim 9, see rationale above as

previously addressed.

Correspondence information

7.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Chuck Kendall whose telephone number is 571-272-

3698. The examiner can normally be reached on 10:00 am - 6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Tuan Dam can be reached on 571-272-3695. The fax phone number for the

organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

Ck.

Chuck Kendall 01/08/07